

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F I L E D
APR 16 2007
CLERK'S OFFICE
DETROIT

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 05-80216

v.

HON. LAWRENCE P. ZATKOFF

D-1 RICHARD KUSTRZYK

Defendant.

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S
EMERGENCY MOTION SEEKING EXTENDED REPORTING DATE OR
HOME CONFINEMENT

The United States of America, by its attorneys, STEPHEN J. MURPHY, United States Attorney for the Eastern District of Michigan, and SAIMA S. MOHSIN, Assistant United States Attorney for the District, respectfully opposes the defendant's request to extend his Reporting Date to the Bureau of Prisons and to Modify Terms of Confinement to Allow Home Confinement, for the following reasons:

1. On July 20, 2005, the defendant entered guilty pleas to Mailing of Child Pornography, in violation of 18 U.S.C. §2252A(a)(1), Receipt of Child Pornography, in violation of 18 U.S.C. §2252A(2), Possession of Child

Pornography, in violation of 18 U.S.C. §2252A(a)(5)(B) and on January 4, 2007, the defendant was sentenced to concurrent sentences of 30 months in prison, followed by 3 years of supervised release.

2. During the January 4, 2007 sentencing hearing, the Court permitted voluntary surrender to the Bureau of Prisons, stating: "the Court will order that the defendant report to a designated institution on February 23rd, 2007 at or before noon." (Exhibit 1: 01/04/07 Sentencing Hearing at TR: 23). The defendant was designated at FCI-Elkton.

3. The defendant failed to surrender to FCI-Elkton on that date. In his Emergency Motion, the defendant states that he was taken into surgery on March 15, 2007, and had been hospitalized for more than a week. (Defendant's Motion at p.1). Pretrial Services informed undersigned counsel that the first contact they had with the defendant was on March 9, 2007 and that the defendant was in the hospital on that date. The defendant also offers a letter dated March 1, 2007, from Dr. Joseph F. Burtka, recommending home confinement. The letter briefly references defendant's symptoms and states that the defendant was sick and hospitalized at Troy Beaumont Hospital on that date. There is no information about the defendant's whereabouts between February 23, and March 1, 2007, and between March 1 and March 9, 2007.

4. Moreover, the government opposes the defendant's request for a modification of terms of confinement to allow home confinement. After the defendant failed to surrender at his designated facility, FCI-Elkton, the government learned that On October 23, 2006, Sterling Heights Police were called to the defendant's residence where they recovered an unregistered blue steel snub nose revolver and ammunition. The defendant initially lied to the officers, stating that he heard a popping noise prior to his back door wall shattering. Later, the defendant admitted that he possessed the unregistered firearm, was blowing off steam and fired a round at the door. Officers found and seized the firearm loaded with 4 live rounds. (Attached Exhibit 2, Sterling Heights Police Report). At the time the defendant possessed the firearm, he had been convicted (though not sentenced) of the instant charges and was in violation of his bond conditions which prohibited him from committing a state or local crime. The defendant did not report this incident to pretrial services or to the Court prior to his sentencing on January 4, 2007. Instead, the defendant's attorney, perhaps unwittingly, asked the Court to consider that the defendant "has led a life otherwise without blemish for fifty odd years." (Exhibit 1: 01/04/07 Sentencing Hearing at TR: 7).

5. The defendant pleaded guilty nearly 20 months ago. Since that time, he has repeatedly asked for extensions of time, including to allow him time to vest

his pension and benefits, to allow him time to care for his elderly and frail father, and now, because of his physical health problems. The government contends that the defendant's failure to report to FCI-Elkton was unjustified. Moreover, no extension of reporting date or modification of conditions is warranted.

CONCLUSION

For these reasons, the government asks the Court deny the defendant's request for an extension of reporting date and for a modification of the defendant's terms of confinement.

Respectfully submitted,

STEPHEN J. MURPHY
United States Attorney



Saima S. Mohsin
Assistant United States Attorney
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9163
saima.mohsin@usdoj.gov

Date: March 20, 2007.

Sentencing Hearing
Thur., 1-4-2007

7

1 the war. That's where he met his future wife.
2 Mr. Kustrzyk's mother. Mr. Kustrzyk's mother, entire
3 family except for her were wiped out in those camps and so
4 Mr. Kustrzyk now is that of a sole person taking care of
5 his father.

6 In the past three or four months, you see
7 Mr. Kustrzyk can barely get around. He has not been able,
8 Judge, to talk about this at all. He goes to therapy.
9 There was funding for the therapy and when that stopped he
10 went anyway, paid for it himself. And he has lost
11 40-pounds. He is 113-pounds, your Honor, at this time.
12 Barely able to do it.

13 I think that there is a deep, deep remorse here
14 and deep psychological scar which he has inflicted upon
15 himself and that is something I think which you can take
16 into account because it's never going to happen again.

17 I think, moreover, your Honor, if you consider
18 that he has led a life otherwise without blemish for fifty
19 odd years, Fifty-four years, worked, raised children, and
20 only at the end he gives way to this. He is himself not a
21 predator on children. He has never approached any living
22 child. It's indirect. I don't mean to minimize that. I
23 don't mean to minimize the indirect effect. But it's
24 important that there is a distinction between direct and
25 indirect effects and that is something that you should

Sentencing Hearing
Thur., 1-4-2007

23

1 period of 30 months. That is on Counts One, Two and
2 Three. Those should be -- they shall be served
3 concurrently. That is to be followed by three years of
4 supervised release with the standard conditions as adopted
5 by the Eastern District of Michigan. Special conditions
6 will be that the defendant undergo mental health and/or
7 substance and abuse and/or alcohol testing and treatment
8 and the direction and discretion of the United States
9 Probation Department. I am also adopting all the other
10 special conditions as recommended by the Probation
11 Department. I am imposing a special assessment in the
12 amount of \$300. I am waiving all fines and costs of
13 confinement.

14 I am going to issue some time today or tomorrow a
15 written Opinion with respect to specific reasons for
16 failing to abide by the advisory guidelines. That will be
17 issued today or tomorrow.

18 Does the government have any objections to
19 voluntary reporting?

20 **MS. MOHSIN:** Your Honor, we don't have an
21 objection to voluntary reporting. But I have some things
22 to put on the record when the Court is ready.

23 **THE COURT:** There being no objection, the
24 Court will order that the defendant report to a designated
25 institution on February 23rd, 2007 at or before noon. You

from: STERLING HEIGHTS PD RECORDS 5862764069

S City of Sterling Heights Police Department
40333 Dodge Park Road
Sterling Heights, Michigan 48313
586.446.2800

NARRATIVE REPORTA PRIMARY SUPP PAGE 2 OF 2

1	DATE 11-02-2006	DAY MON	SHIFT CB	PLATOON 0	BADGE 1 0201	BADGE 2	DEPARTMENT	YR 016	INCIDENT NUMBER 42685
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ALL CRIME-DIS (BASED ON APPLICABLE STANDARDS) NARRATIVE REPORT FORMS MUST ADHERE TO THE FOLLOWING STANDARDIZED FORMAT: SUMMARY / WEATHER / ROAD CONDITIONS / APPEARANCE OF DRIVER / SOBRIETY TESTS / BOOKING / INTERVIEW WITH VICTIM(S) / INTERVIEW WITH SUSPECT(S) / INTERVIEW WITH WITNESS(ES) / ARREST / OFFICER ACTIONS / ADDITIONAL INFORMATION

Re: To A "MDOP" At 40220 DIANE

Summary: RICHARD KUSTREZYK REPORTED HEARING A POPPING NOISE THEN THE BACK DOOR WALL SHATTERED. A BULLE WAS FOUND IN THE SAME ROOM AND RICHARD ADMITTED TO FIRING OFF 1 ROUND.

Information: Upon Arrival I Spoke With Richard. Richard Stated He Was WATCHING TV IN THE FAMILY ROOM WHEN HE HEARD A POPPING NOISE THEN THE BACK DOOR WALL SHATTERED. Richard DID NOT SEE ANYONE IN THE BACKYARD BEFORE OR AFTER THE DOOR WALL SHATTERING. Richard Could Provide No More INFORMATION

The DOOR WALL WAS COMPLETELY SHATTERED WITH A SMALL HOLE NEAR THE BOTTOM OF THE DOOR. THE APPEARED TO BE A BULLET HOLE. Richard GAVE ME PERMISSION TO SEARCH THE ROOM TO TRY TO FIND WHATEVER MADE THE HOLE. UNDERNEATH THE COUCH RICHARD SAID HE WAS SITTING ON I FOUND A BULLE STRIPPED SILVER NOSE REROWER. I TOOK CUSTODY OF THE BULLE AND ASKED RICHARD IF IT WAS HIS. HIS RESPONSE WAS "YES, BUT IT'S NOT REGISTERED." I OPENED THE CYLINDER AND FOUND 4 LIVE ROUNDS AND 1 FIZZED ROUND. RICHARD THEN ADMITTED TO FIRING ONE ROUND AT THE DOOR-WALL. Richard SAID HE DID NOT SHOT AT ANYONE, HE WAS FLOWING OFF STEAM. IT APPEARS THE BULLET WENT INTO THE GROUND IN THE BACKYARD.

RICHARD IS 10-29 CIVIC, RELEASED PENNINE WARRANT. THE BULLE IS 10-29 CIVIC
NO RECORDS ON P TAB # 124227.

SET SPANIEVSKY ON SCORE

INVESTIGATING OFFICER(S)

Spanievs

0201

REVIEWED BY
MTO

ASSIGNED TO / BADGE

ATTENDANT

GOVERNMENT
EXHIBIT

2

From: STERLING HEIGHTS PD RECORDS 5862764069

03/09/2007 13:06 #021 P.004/006

S City of Sterling Heights Police Department
40333 Dodge Park Road
Sterling Heights, Michigan 48313
58-446,2800

INCIDENT / PROSECUTION REPORT

AREA DISTRICT _____
X PRIMARY SUPP PAGE 1 OF 2

01	DATE 10/23/06	DAY MON	SHIFT 013	PLAT 6	BADGE 1 0201	BADGE 2	REPORT NUMBER 016	YEAR 06	INCIDENT # 42685				
02	RECEIVED 10/15/06	DISPATCHED 10/15/06	ARRIVED 10/15/06	COMPLETED 10/15/06	DATE(S) OCCURRED 10/23/06		TIME(S) OCCURRED 19:50						
03	LOCATION / ADDRESS 492120		(DIRECTION, STREET, SUFFIX, QUALIFIER) DIANE				LOCATION 2 (INTERSECTING STREET)						
04	CITY STERLING HEIGHTS		STATE MI	ZIP 48313	CODE	BUSINESS NAME		BUSINESS PHONE					
05	ESTAB CODE 000	ORIGIN 0 PERSON 0 POP 0 OTHER	REPORT TAKEN 0 IN PERSON 0 PHONE 0 STATION 0 OTHER		DEPT / SECTION 0 POLICE 0 FIRE 0 MEDICAL 0 OTHER		DEPT / SECTION 0 POLICE 0 FIRE 0 MEDICAL 0 OTHER		POINT OF ENTRY / ATTACK				
06	NATURE OF INCIDENT #1 RECKLESS DISCHARGE FIREARM												
07	NATURE OF INCIDENT #2												
08	NATURE OF INCIDENT #3												
09	NATURE OF INCIDENT #4												
CODES (1) REPT'D BY (2) OWNER (3) VICT (4) PERP/INTERV (5) ARREST (6) SUSP (7) MISS (8) WITN (9) SECURITY BY (10) JUV ARREST (11) DRIVER (12) PASSENGER (13) RESPONSIBLE (14) SUMMONED (15) MISC													
10	CODE	VICT	ACTUAL VICTIM/COMPLAINANT/REPORTER (LAST, FIRST, MIDDLE, SUFFIX)			RAC	SEX	DOB	AGE	VICTIM TO RECEIVE CVRA NOTICE			
11	CODE	NAME (LAST, FIRST, MIDDLE, SUFFIX) (ACTUAL VICTIM'S RPP)			RAC	SEX	DOB	AGE	RELATION TO ACTUAL VICTIM				
12	ADDRESS	(DIRECTION, STREET, SUFFIX, QUALIFIER)				CITY	STATE	ZIP					
13	HOME PHONE	BUSINESS PHONE	STATE	DRIVERS LICENSE #		CONN 0 2 8 2	TYPE	REL TO DFN #	INJ	V CIRC	JHC		
14	CODE 1601	ORIGIN 1601	SUSPECT/WITNESS PERSON NAME (LAST, FIRST, MIDDLE, SUFFIX)			RAC	SEX	DOB 01/14/52	AGE 29				
15	ADDRESS 492120	(DIRECTION, STREET, SUFFIX, QUALIFIER) DIANE				CITY STERLING HEIGHTS	STATE MI	ZIP 48313					
16	HOME PHONE 562-2609 (10/15/06)	BUSINESS PHONE	HEIGHT	WEIGHT	EYES	HAIR	LENGTH	STYLE	BUILD	SKIN TONE			
17	STATE MI	DRIVER'S LICENSE # K12131114824611000	SOC SEC #	SOC SEC #		SD #	FBI #		MISC #				
18	ALIAS (MAIDEN NAME, LAST, FIRST, MIDDLE, SUFFIX)			COMMENTS/CLOTHING/ ETC									
19	ADDRESS/PHONE	ARREST DATE	PLAT	BADGE 1	BADGE 2	FM	DIS	ARREST DATE	PLAT	BADGE 1	BADGE 2	FM	DIS
20	LAST NAME / FIRST NAME LUGER, RICHARD	ARMED AT ARREST NO	ORIGIN 0 PER 0 POP 0 MOT 0 TBL	REMARKS / COMMENTS / ETC									
CODES (H) HOLD (S) STOLEN (V) COUNTERFEIT (E) EVIDENCE (L) LOST (A) ATTACHED (R) RECOVERED (F) FOUND (C) CONFISCATED (I) IMPOUNDED (W) SUSPECT VEHICLE (B) BURNED													
21	ITEMS CHARGER ARMS 388SL	DESCRIPTION	PROP TYPE 1130P	QUANTITY 01	YEAR 01	MAKE CHARGER ARMS		MODEL					
22	STYLE BLK	COLOR(S) BLK	MONTH	YEAR	STATE	LICENSE 18282		SERIAL / VIN					
23	STOLEN S	DAMAGED S	RECOVERED S	PROPERTY TAG # 124227		LOCATION PROPERTY		LEIN REF #	NIC #				
24	COMMENTS / INSURANCE CO / LIEN HOLDER / BANK / REC. BY / WHERE / WHO W 4 LIVE 1500K hours & 124228				REC BADGE 1	REC BADGE 2	LBO	RECOVERY DATE	LG TYPE	REMARKS / COMMENTS / ETC			
25	BRIEF SUMMARY OF OFFENSE TITLE / SUMMARY												
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Case 205-cr-80216-LPZ-DAS ECF No. 25 Page 86 Filed 04/16/07 Page 9 of 10

From: STERLING HEIGHTS PD RECORDS 5862764069

03/09/2007 13:07 #021 P.006/006

Sterling Heights Police Department

40333 Dodge Park Road, Sterling Heights, MI 48313
(586) 446-2800 MT5076300

NARRATIVE REPORT

PO #

SUPPRESS

RP TYPE
SUPPLEMENTAL

PAGE 1 OF 1

01	DATE 01/15/07	DAY MON	SHIFT 02	PLAT 01	BADGE 1 0690	BADGE 2	INCIDENT STATUS <input type="checkbox"/> CLR ARREST <input type="checkbox"/> CUR EXCEPT <input checked="" type="checkbox"/> (INACT)	CRIME CLASS	INCIDENT # 06-0042685
----	------------------	------------	-------------	------------	-----------------	---------	--	-------------	--------------------------

02 OFC. A. FETT#0690 01/15/07 01010HRS. *OPN*

03

04 REGARDING: FELONY WARRANT FOR FRAUD- FALSE STATEMENT

05

06 ARRESTED: KUSTRZYK, RICHARD FRANCIS W/M 01/22/52
40220 DIANE STERLING HEIGHTS, MI. 48313
TX. [586]268-6663

07

08

09

CHARGE: FELONY WARRANT FOR FRAUD- FALSE STATEMENT
OCA: 06-42685 41-ADIST.CT. STERLING HEIGHTS
[FALSE REPORT OF A FELONY]
NO BOND

10

11 STATION REPORT

12

13 KUSTRZYK CAME INTO THE STATION TO TURN HIMSELF IN ON OUR DEPARTMENT'S
14 OUTSTANDING FELONY WARRANT. THE WARRANT WAS CONFIRMED PER THE OPERATIONS
15 OFFICER, SGT. LABAERE. KUSTRZYK WAS TAKEN INTO CUSTODY AND ESCORTED TO THE
16 DETENTION FACILITY WHERE HE WAS PROCESSED. KUSTRZYK WAS LEFT WITH DETENTION
17 PERSONNEL TO AWAIT ARRAIGNMENT.

18

19 THE WARRANT WAS CANCELLED FROM LEIN BY BADGE#2385.

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INVESTIGATING OFFICER(S)

A. FETT#0690

REVIEWED BY

107

ASSIGNED TO / BADGE

ATTENTION TO

IS

U. S. Department of Justice

United States Attorney
Eastern District of Michigan*AUSA Saima S. Mohsin*

(313) 226 9163

211 W. Fort Street
Suite 2100
Detroit, Michigan 48226-3211**FAX COVER SHEET**

TO: Chambers of Honorable Lawrence P. Zatkoff

FROM: AUSA SAIMA MOHSIN

FAX #: (810) 98401480

DATE: March 20, 2007

RE: Richard Kustzyrk

Number of Pages (Including Cover): ~~X~~ 10

Please find attached courtesy copy of the Government's Response to the defendant's Emergency Motion for Extension of Report Date and Request for Modification of Confinement to Allow Home Confinement.

The Government's Response to be E-Filed tomorrow am.